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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW PETITION(st) NO. 25948 OF 2006
IN
WRIT PETITION NO.2177 OF 1990

Sudhir Dattatraya Jadhav ...Petitioner

V/s.

Secretary
Dnyansadhana Junior College ...Respondents

Mr.G.S.Godbole with Mr.S.S.Kanetkar for the Applicant
Mr.M.S.Lagu for the Respondent Nos. 1 & 2.

CORAM : B.H.MARLAPALLE,J
DATED : 19th December, 2007

P.C.

Heard Mr.Godbole. This Review Petition arises from the Judgement dated 29-8-2006 by which Writ Petition No. 2177/1990 filed by the Petitioner challenging the Judgement and order dated 21-9-1989 rendered by the School Tribunal dismissing Appeal No. 90/1997 came to be dismissed.

2. Mr. Godbole, the Learned Counsel for the Review Petitioner submitted that the Judgement under review suffers from errors apparent on the face of record and, therefore, the review petition is tenable. As per Mr. Godbole the Petitioner did possess the requisite

qualifications prescribed for the post of lecturer in the junior college in the academic year 1986-87 in as much as the Petitioner had appeared for the diploma in higher education examination on 7-5-1986 and he obtained the said certificate on 17-7-1986 on becoming a successful candidate in the examination. When the Petitioner had appeared for the D.H.E. examination on 7-5-1986, he possessed the M.A. degree in second class. He had completed M.A. degree in second class in 1980 and, therefore, as per the qualifications laid down in Schedule B to the MEPS Rules, 1981, the Petitioner satisfied the requirements of qualifications. The 2nd ground for review is that the post advertised in the subsequent academic year 1987-88 was also reserved for schedule caste. The Petitioner had applied for the same but was not selected and instead Mr. Jagdale who allegedly did not belong to the schedule caste was selected.

3. It is clear from the perusal of the Judgement of the School Tribunal that when the Petitioner was appointed in the academic year 1986-87, he possessed the requisite qualifications and, therefore, my observations in the Judgement dated 29-8-2006 that the Petitioner did not possess the requisite qualifications is required to be corrected. Accordingly in para-1 of the Judgement

dated 29-8-2006, the sentence "he completed the diploma in July 1987" shall stand corrected and replaced by;

> "he completed diploma in higher education in July 1986."

Similarly, in para-3, the sentence "when he appeared for interview on 3-6-1987 in response to his application, he did not possess the requisite qualification....." shall stand corrected and replaced by

> "when he appeared for interview on 3-6-1987 in response to his application, he did possess the requisite qualification..."

4. The Petition was dismissed not only on the ground that the Petitioner did not possess the requisite qualifications but on the contrary for the dismissal of the petition, the following grounds were set out;

> (a) the Petitioner did not possess the requisite qualifications.
>
> (b) the Petitioner was a temporary appointee for a specific period 20-6-1986 to 30-4-1987.

(c) in the selection process undertaken for academic year 1987-88, the Petitioner was not found suitable and instead Mr. Jagdale, another candidate from the reserved category was found to be suitable and selected and

(d) during the pendency of the appeal before the School Tribunal, the Petitioner was appointed as an Assistant Teacher in the Secondary School run by the Kalyan Municipal Corporation at Dombivali(E).

5. I am, therefore, required to consider whether the review petition requires to be entertained even if it is held and admitted that the Petitioner possessed the requisite qualification for appointment to the post of lecturer in junior college in the academic year 1986-87.

6. The Appeal before the School Tribunal was filed under Section 9 of the MEPS Act, 1977. Right to appeal to the Tribunal under the said Section to an employee of a Private School arises when he/she is dismissed or removed or who is reduced in rank, by the order passed by the management; or who is superseded by the management while making an appointment to any post by promotion. When the Petitioner approached the School Tribunal, he had claimed that when he reported for duty

on 13-6-87, he was not allowed to report and thus there was an oral termination or a case of otherwise termination of service. The School Tribunal noted that the appointment letter issued to the Petitioner on 7-5-86 was for a specific period from 20-6-86 to 30-4-87 and from 1-5-87 he ceased to be in the employment of the junior college automatically. The temporary tenure of appointment was accepted by the Petitioner and he submitted the fresh application in response to the advertisement released for the academic year 1987-88 and the said application was dated 1-7-1987. Even in the said application dated 1-7-1987 the Petitioner admitted that his appointment in the earlier academic year was only upto 30-4-1987 and, therefore, the School Tribunal held that there was no case of illegal termination of service or otherwise termination of service so as to entertain the Appeal under Section 9 of the MEPS Act, 1977. The School Tribunal even otherwise noted that during the pendency of the Appeal, the Petitioner came to be employed in another Secondary School as an Assistant Teacher. Mr.Jagdale who was selected and appointed in the academic year 1987-88 was not impleaded as a necessary party so as to challenge his social status and for the first time in the oral arguments, it has been contended that when he did not belong to schedule caste category Such a ground cannot be

entertained in the review petition.

7. I am, therefore, satisfied that the Judgement dated 29-8-2006 does not require any review save and except the corrections made hereinabove regarding the qualifications of the Review Petitioner.

8. Hence, the Review Petition fails and the same is hereby rejected summarily.

[B.H.MARLAPALLE,J.]